



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

June 1, 1964

Honorable D. C. Greer
State Highway Engineer
Texas Highway Department
Austin, Texas

Opinion No. C-260

Re: Whether Highway funds may be expended for the purpose of constructing a travel exhibit and transporting and staffing same at the leading sports and vacation shows throughout the nation.

Dear Mr. Greer:

You have requested an opinion on whether Highway Funds may be expended for the purpose of constructing a travel exhibit and transporting and staffing same at the leading sports and vacation shows throughout the nation.

Article VIII, Sec. 7-a of the Texas Constitution, added November 5, 1946, states as follows:

"Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth ($\frac{1}{4}$) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County

and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose." (Emphasis added).

Article 6673 of Vernon's Civil Statutes, states as follows:

"The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways. The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid." (Emphasis added).

In regard to the aforementioned statute, reference is made to an earlier Opinion of the Attorney General:

"This article prohibits the diversion of any of the auto registration fees in the Highway Fund to any use except for the maintenance of the highways." Op. Atty Gen. 1939, No. 420.

Article 6674 of Vernon's Civil Statutes, states as follows:

"The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the Highway Engineer and all other employes of the Department, and determine the number of such employes; and shall fix the compensation of the members of the Commission at not exceeding twenty-five hundred dollars per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid

from the State Highway Fund and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided." (Emphasis added).

Article 6674e of Vernon's Civil Statutes, states as follows:

"All moneys now or hereafter deposited in the State Treasury to credit of the 'State Highway Fund,' including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Highway Department." (Emphasis added).

Article 6674q-6 of Vernon's Civil Statutes states as follows:

"Each month the Comptroller of Public Accounts after computing and ascertaining the maximum amount of refunds that may be due by the state on the business of selling gasoline, as provided in Section 17, Chapter 88, General Laws, Acts of the Second Called Session of the 41st Legislature, as amended by Chapter 104, General Laws, Acts of the Regular Session of the 42nd Legislature, shall deduct same from the total occupation or excise tax paid on the business of selling gasoline, as imposed by Section 17, Chapter 98, General Laws, Acts of the Regular Session of the 42nd Legislature, as amended, and beginning with said taxes collected on or after October 1, 1932, shall, after deducting the said maximum amount of refunds, allocate and place the remainder of said occupation or excise tax on the business of selling gasoline, in the State Treasury as provided by law, in the proportion as follows: one-fourth ($\frac{1}{4}$) of such occupation or excise tax shall go to, and be placed to the credit of, the Available Free School Fund; one-fourth ($\frac{1}{4}$) of the same shall go to, and be placed to the credit of a fund to be known as the 'County and Road District Highway Fund,' subject to the provisions and limitations of Section 3 of this Act; the remainder of such occupa-

tion or excise tax shall go to, and be placed to the credit of the State Highways Fund, for the construction and maintenance of the public roads of the state, constituting and comprising the System of State Highways of Texas, as designated by the State Highway Commission of Texas."
(Emphasis added).

The foregoing constitutional and statutory provisions govern the allocation of money from the State Highway Fund. An examination of the clear and unambiguous wording of each of said provisos reveals that the moneys in the State Highway Fund can only be used for the following purposes: acquisition of rights-of-way; construction of public roadways; maintenance of said roadways; policing of said roadways; operation of the Department and the purchase of necessary equipment.

Article 6144e, Section 3(a) of Vernon's Civil Statutes specifies the role of the Texas Highway Department in connection with the Tourist Development Program. Said Article states as follows:

"For the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, the Department is empowered to compile and publish, for free distribution, such pamphlets, bulletins, and documents as it will deem necessary and expedient for informational and publicity purposes concerning the highways of the state, and with respect to public parks, recreational grounds, scenic places, and other public places and scenic areas or objects of interest, data as to distances, historical facts, and other items or matters of interest and value to the general public and road users; and said Department is authorized and empowered to make or cause to be made from time to time a map or maps showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by said highways, and may cause to be printed, published, and prepared in such manner or form as the Department may deem best, all of such information and data and provide for the distribution and dissemination of the same in such manner and method and to such extent as in the opinion of the Department will best serve the motoring public and road users. The Department shall maintain and operate Travel Information Bureaus at the principal gateways to Texas for the

purpose of providing road information, travel guidance, and various descriptive materials, pamphlets, and booklets designed to furnish aid and assistance to the traveling public and stimulate travel to and within Texas. The Texas Highway Department is authorized and empowered to pay the cost of all administration, operation, and the cost of developing and publishing various material and dissemination thereof, including the cost of operating Travel Information Bureaus from highway revenues. The Texas Highway Department is further empowered to receive and administer a legislative appropriation from the general fund for the specific purpose of purchasing advertising space in periodicals of national circulation, and/or time on broadcasting facilities. The Department shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope, and for the contracting of space in magazines, papers, and periodicals for the publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and corporations outside the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving or still pictures in the state, and provide for the showing of the films when taken, and the Department may join with other governmental departments of the state in publishing such informational publicity matter." (Emphasis added).

In regard to the Tourist Development Program, highway revenues may only be used for the compilation, publishing and dissemination of travel information, and for the operation of Travel Information Bureaus at the principal gateways to Texas. There is no provision for an interstate travel exhibit.

SUMMARY

Article VIII, Sec. 7-a of the Texas Constitution and Articles 6673, 6674, 6674e, 6674q-6 and 6144e, Sec. 3(a) of Vernon's Civil Statutes designate the various items and programs for which Highway Funds

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may be expended. None of said Constitutional and Statutory provisions allow expenditure of Highway Funds for the purpose of constructing a travel exhibit and transporting and staffing same at the leading sports and vacation shows throughout the nation.

Yours very truly,

WAGGONER CARR
Attorney General

By *Roy B. Johnson*
Roy B. Johnson
Assistant

RBJ:sj

APPROVED:

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